

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

STEVEN R. BLAIR,

8:07CV307

Plaintiff,

v.

**MEMORANDUM  
AND ORDER**

NEBRASKA DEPARTMENT OF  
CORRECTIONAL SERVICES, TIM  
PAVEL, TYLER ENDICOTT,  
DANIEL WENDT, ROLAND  
LIEHUS, CHAD PIERCE, TRACE  
MALOUSEK, and MARLIN  
LEYBOLD,

Defendants.

This matter is before the court on Plaintiff's Motion for Leave to Appeal In Forma Pauperis. (Filing No. [106](#).) On June 22, 2010, the court dismissed Plaintiff's claims and entered judgment against him. (Filing Nos. [103](#) and [104](#).) On July 23, 2010, Plaintiff filed an untimely Notice of Appeal of the court's Judgment. (Filing No. [105](#).)

[Federal Rule of Appellate Procedure 4\(a\)\(1\)](#) requires that the notice of appeal in a civil case be filed within thirty days after judgment is entered. "A timely notice of appeal is both mandatory and jurisdictional." [Burgs v. Johnson County, Iowa, 79 F.3d 701, 702 \(8th Cir 1996\)](#). Moreover, an untimely notice of appeal cannot serve as a motion for extension of time to file appeal. *Id.* However, the district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause. [Fed. R. App. P. 4\(a\)\(5\)\(A\)\(ii\)](#).

Plaintiff did not move to extend the time to file a notice of appeal in this matter. (See Docket Sheet.) However, on the court's own motion, Plaintiff shall have until

August 20, 2010, to file an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Plaintiff fails to submit such an affidavit, Plaintiff's appeal will not be processed.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until August 20, 2010, to submit an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Plaintiff fails to submit such an affidavit by August 20, 2010, Plaintiff's appeal will not be processed.

2. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for affidavit on August 20, 2010.

DATED this 2<sup>nd</sup> day of August, 2010.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge

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